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August 2, 1994

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AUG - 3 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, NW  
Washington, DC 20554


Re: Written Ex Parte Presentation - CC Docket No. 93-253

Dear Mr. Caton:

Cook Inlet Region, Inc. ("CIRI") hereby gives notice of a written ex parte presentation in the above-referenced proceeding. The presentation was made in the form of the attached letter to Chairman Hundt.

Two copies of the letter are submitted herewith pursuant to Section 1.1206(a)(1) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(1) (1993).

Sincerely,

  
Mark F. Dever

enclosures

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AUG 3 1994

CIRI

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

COOK INLET REGION, INC.

July 26, 1994

The Honorable Reed E. Hundt, Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

Fax: (202) 632-0163

Dear Chairman Hundt:

As President of Cook Inlet Region, Inc. (CIRI), I met fifteen months ago with Senators Stevens and Inouye to suggest special legislation regarding PCN. The proposal was to create a meaningful "ground floor" role for minorities (including Native Americans) and other disadvantaged groups in the emerging PCN industry. Thereafter we worked closely with the Senators to develop this legislation. Since then we have worked diligently with the FCC as it developed the implementing rules. In response to the Commission's urging, CIRI provided special research to support the record, and provided testimony before a Congressional subcommittee. The FCC based its PCN "Designated Entities" program substantially on the existing SBA affiliation rules.

One of the issues of special importance to Native Americans was the adoption of the existing SBA rule (copy attached) on tribal affiliation. This rule was based on federal legislation. That legislation recognized the economic reality of Native American tribes. These tribes are, in essence, forced aggregations of the very limited capital of a disadvantaged group of people. Tribal assets are held in a unique trust relationship and are severely limited in their business use. The legislation and the SBA rule provide that, notwithstanding their "size," tribes have limited access to capital and should be allowed to participate in the SBA programs. This issue was briefed in our filings and discussed with the FCC. Of 169 reply comments filed with the Commission, not one took issue with inclusion of this SBA rule as proposed by CIRI. Finally, at our meeting with you a few weeks ago, I explained this situation and I clearly understood you to say that this rule would be included.

I must now sadly report to you that the FCC's new PCN rules not only omit this provision, but also effectively disenfranchise the Native American community from participating in the PCN process. As a practical matter, Native Americans have no capital and no access to capital outside their tribal entities. I cannot overstate our disappointment in this result. I know this was not the intent of congress in enacting the PCN legislation.

Honorable Reed E. Hundt, Ch.  
Federal Communications Commission  
July 26, 1994  
Page 2

Moreover, this discrimination against Native Americans must be viewed in contrast to glaring loopholes adopted by the FCC. Under the FCC's definition of a "small business consortium," 6,000 wealthy individuals (doctors, dentists, lawyers, bankers, NBA or NFL or NHL Players' Associations, celebrities, trust-fund kids) each with up to \$40 million in personal net worth, can aggregate into so-called "small business consortiums" with up to \$240 billion in assets. These "underprivileged" folks then get special discounts and 10-year, 10% government financing. And yet, 6,000 poor Native Americans (such as CIRI's shareholders, with an average family income of \$15,000 per year) are effectively excluded from all preference provisions under the rule.

I ask your help in expeditiously correcting this matter. Any correction of this unjust result must occur immediately if any meaningful participation by Native American groups such as CIRI will be possible in the upcoming FCC auctions. We urge the Commission to correct this matter on its own motion. We have provided suggested language to your staff.

Sincerely,

COOK INLET REGION, INC.

  
Roy M. Huhndorf  
President

Enclosure

## DEFINITIONS

**§ 121.401 Affiliation.**

(a) *General rule.* (1) Except as otherwise noted, size determinations shall include the applicant concern and all its domestic and foreign affiliates. Moreover, all affiliates, regardless of whether organized for profit, must be included.

(2) Except as otherwise provided in this section, concerns are affiliates of each other when either directly or indirectly

(i) One concern controls or has the power to control the other, or

(ii) A third party or parties controls or has the power to control both, or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(3) In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

(b) *Exclusion from affiliation coverage.* Portfolios or client concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying under the Small Business Investment Act of 1958, as amended, or by Investment Companies registered under the Investment Company Act of 1940, as amended, concerns owned and controlled by Indian Tribes, or concerns owned and controlled by Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.) are not considered affiliates of such investment companies, development companies, tribes or Alaska Regional or Village Corporations.

(c) *Nature of control in determining affiliation.* (1) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

*Example.* A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less

than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties have the power to control a concern while at the same time another party, or other parties, may be in control of the concern at the will of the party with the power to control.

(2) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.

(3) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

*Example.* In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of a concern's voting stock, but no officer or director has a block sufficient to give him control of the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(d) *Identity of interest between and among persons as an affiliation determinant.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(e) *Affiliation through stock ownership.* (1) A person is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(2) A person is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(3) If two or more persons each own, controls or has the power to control less than 50% of the voting stock of a concern, such minority holdings are equal or approximately equal in size.

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